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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

IN RE: FACEBOOK, INC. CONSUMER  
PRIVACY USER PROFILE LITIGATION,

This document relates to:  
  
ALL ACTIONS

CASE NO. 3:18-MD-02843-VC

**FACEBOOK, INC.'S RENEWED  
ADMINISTRATIVE MOTION TO FILE  
UNDER SEAL SPECIAL MASTER'S  
ORDER RE: BUSINESS PARTNERS**

Pursuant to Civil Local Rules 7-11 and 79-5, as well as the Court's December 8, 2021 Order Re: Administrative Motions To Seal, Dkt. 764, Facebook, Inc. ("Facebook") hereby submits this Renewed Administrative Motion to File Under Seal limited portions of Special Master Garrie's Order November 2, 2021 Order Re: Business Partners and supporting exhibits (the "Order"). Specifically, Facebook moves to permanently seal three categories of information: (1) confidential information regarding Facebook's business partners; (2) confidential information regarding Facebook's business strategies; and (3) confidential information about Facebook's privacy architecture. There is good cause to seal permanently this confidential information, and Facebook's request is narrowly tailored.

## **I. Background**

A description of the Special Master's Order and the discovery dispute from which it arose is set forth in Facebook's statement in support of its original motion to seal. Dkt. 762.

On November 19, 2021, Facebook filed its Administrative Motion To File Under Seal Special Master's Order Re: Business Partners, Dkt. 760. The Court denied without prejudice Facebook's Motion and permitted Facebook to file a renewed motion with more tailored redactions. Dkt. 764. Facebook respectfully submits this renewed motion to file under seal pursuant to the Court's order.

## **II. The Good Cause Standard Applies Because The Motion Is Unrelated To The Merits.**

Courts seal information in non-dispositive motions so long as there is good cause to do so because public disclosure of the information would cause harm or prejudice, and the request is narrowly tailored. *Doe v. Walmart, Inc.*, 2019 WL 636362 at \* 1-3 (N.D. Cal. Feb. 11, 2019); *see also Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) ("[T]he public has less of a need for access to court records attached only to non-dispositive motions because those documents are often unrelated, or only tangentially related, to the underlying cause of action). Here, the Order relates to a discovery dispute regarding responses to interrogatories, not the merits of this action, so the good cause standard applies. There is good cause to permanently seal Facebook's limited proposed redactions.

### III. There Is Good Cause To Seal Facebook's Three Categories of Confidential Information

Consistent with Special Master Garrie's instructions to file his Order under seal and in light of the guidance in the Court's December 8, Order, Facebook asks the Court to permanently seal the following information in the Order: (1) confidential information regarding Facebook's business partners; (2) confidential information regarding Facebook's business strategies; and (3) confidential information about Facebook's privacy architecture. There is good cause to seal this information.

***Confidential information regarding Facebook's business partners.*** There is good cause to seal limited portions of Facebook's interrogatory responses and the parties' briefs that reveal the names of Facebook's business partners that have not been revealed publicly, as well as the terms of agreements between Facebook and its business partners. Courts regularly seal information that would identify confidential business relationships or reveal the terms of business relationships that competitors would be able to use to a party's commercial disadvantage. *See, e.g., Obesity Rsch. Inst., LLC v. Fiber Rsch. Int'l, LLC*, 2018 WL 3642177, at \*6 (S.D. Cal. Aug. 1, 2019) (granting a motion to seal information that, if publicly disclosed, would have "identif[ied]" certain "business relationships"); *Asetek Danmark A/S v. CMI USA, Inc.*, 2015 WL 4511036 at \*2 (N.D. Cal. July 23, 2015) (sealing information "competitors would be able to take advantage of" and use to cause "competitive harm"). Facebook's proposed redactions include the names of Facebook's business partners that are not publicly known. Order Ex. F at 64–67; Order Ex. I at 3:22–25, 6:10–11, 6:26, 7:6; Order Ex. J at 7:2–3, 7-6, 11:24; Order Ex. K at 1:19–21, 6:19–21, 6:24, 7:1–4. The proposed redactions also include confidential details about particular terms of Facebook agreements with these business partners. Order Ex. I at 3:21, 4:12, 5:17–18, 5:23–26; Order Ex. J at 7:15; Order Ex. K at 1:19–21, 4:10–12, 6:24–7:4. If publicly disclosed, this confidential information could harm Facebook's relationships with these business partners by disclosing their identities and the confidential terms of their agreements with Facebook. Swanson Decl. ¶ 6. Disclosure could also undercut Facebook's ability to negotiate fairly with competitors of these business partners. *Id.* The proposed redactions also describe Facebook's relationships with a specific category of business partners and the details of Facebook's agreements with those same partners. Order Ex. I at 3:15-17;

Order Ex. J at 7:10-15. Public disclosure of this category of partners, in close proximity to details of Facebook’s agreements with these partners, would likely allow Facebook’s competitors to surmise both the identities of these partners and confidential information about Facebook’s business model because few entities provide these services. Swanson Decl. 6.

***Confidential information regarding Facebook’s business strategies.*** There is good cause to seal Facebook’s proposed redactions regarding Facebook’s specific business strategies. Courts routinely seal information revealing a company’s confidential business strategies, business partnerships, and proprietary methods that could be used by its competitors to its commercial disadvantage. *Baird v. BlackRock Institutional Tr. Co.*, N.A., 403 F. Supp. 3d 765, 792 (N.D. Cal. 2019) (finding “sufficiently compelling reason to seal” documents containing “confidential business and financial information”); *Obesity Rsch. Inst., LLC*, 2018 WL 3642177, at \*6; *In re Qualcomm Litig.*, 2017 WL 5176922, at \*2 (S.D. Cal. Nov. 8, 2017) (observing that sealing is warranted to prevent competitors from “gaining insight into the parties’ business model and strategy”); *In re Liboderm Antitrust Litig.*, 2016 WL 4191612, at \* 26 (N.D. Cal. Aug. 9, 2015) (granting a motion to seal document descriptions that “reflect[ed] and convey[ed] confidential, proprietary information about Endo’s business operations as well as its strategies”); *In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)) (granting writ of mandamus and sealing document that could be used “as [a] source[] of business information that might harm a litigant’s competitive standing”).

A small number of redactions include strategic discussions about building relationships with specific app developers to further enhance a user’s experience. Disclosure of these strategic discussions would identify relationships of particular value to Facebook. Order Ex. I at 6:6–7:7; Order Ex. K at 5:1–8. If publicly disclosed, this information would harm Facebook’s business relationships by disclosing its priority partnerships—weakening future negotiating positions with those partners and harming Facebook’s business relationships with competitors of those partners—as well as exposing to its competitors which partnerships are most valuable. Swanson Decl. ¶ 7.

1 The redactions also encompass discussion of how Facebook analyzes the value of strategic  
 2 acquisitions and how Facebook and its subsidiaries store user data. Order Ex. I at 7:9–11. If publicly  
 3 disclosed, this information would be valuable to Facebook’s competitors, who could use it as a  
 4 shortcut to develop their own framework for handling user data across separate platforms, gaining an  
 5 unfair advantage in the market. Swanson Decl. ¶ 8. Facebook’s competitors could gain a leg up in  
 6 the industry by taking advantage of insights revealed in these documents. *Id.*

7 As discussed above, the redactions further include confidential information about Facebook’s  
 8 business model regarding relationships with a specific class of partners. Order Ex. I at 3:15-17;  
 9 Order Ex. J at 7:10-15. Disclosing the category of partners and the terms of Facebook’s agreements  
 10 with these partners would reveal confidential information regarding Facebook’s business model that  
 11 its competitors could adopt, to Facebook’s competitive disadvantage. Swanson Decl. ¶ 9. A limited  
 12 number of redactions include business strategy discussions with Facebook’s board of directors about  
 13 a specific business program. Order Ex. I at 5:26–6:2; Order Ex. K at 4:18–22. Disclosing the  
 14 strategic priorities of Facebook’s leadership and board of directors would provide competitors with  
 15 valuable commercial information that they could use to Facebook’s competitive disadvantage.  
 16 Swanson Decl. ¶ 10.

17 ***Confidential information regarding Facebook’s privacy architecture.*** There is good cause  
 18 to seal Facebook’s proposed redactions regarding Facebook’s privacy architecture, which reveal  
 19 technical information about how Facebook’s code operates with respect to users’ privacy selections.  
 20 Order Ex. F at 71–72. Courts routinely seal information that would allow competitors to learn about  
 21 a party’s confidential business strategy or proprietary information that could be used to a party’s  
 22 competitive disadvantage. *In re Qualcomm Litig.*, 2017 WL 5176922, at \*2; *In re Liboderm Antitrust*  
 23 *Litig.*, 2016 WL 4191612, at \* 26. Developing technological methods to protect user privacy is  
 24 critical to any social media platform, including Facebook’s competitors. If technical details of  
 25 Facebook’s privacy architecture were publicly disclosed, Facebook’s competitors could use such  
 26 information to shortcut development of their own methods and policies, unfairly using Facebook’s  
 27 own confidential experience and know-how to compete with Facebook. Swanson Decl. ¶ 11.  
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1 Disclosure of this information could also provide hackers and other malicious actors with a roadmap  
 2 to evade or subvert some of Facebook's privacy protections, harming not only Facebook, but  
 3 Facebook's users. *Id.*

4 Because of the particularized harm that would occur from public disclosure of information  
 5 regarding Facebook's confidential business partnerships, strategies, and privacy architecture, The  
 6 three categories of confidential information addressed above are highly sensitive and should be sealed  
 7 permanently.

#### 8 **IV. The Limited Proposed Redactions Are Narrowly Tailored.**

9 Facebook has substantially reduced the volume of proposed redactions as compared to its  
 10 original motion to seal in light of the Court's guidance. In general, Facebook has endeavored to limit  
 11 proposed redactions to particular names, business partners, and descriptions of specific sensitive and  
 12 confidential business strategies and practices that Facebook's competitors could use against it. Thus,  
 13 the remaining proposed redactions are narrowly tailored because Facebook's proposed redactions are  
 14 strictly limited to only confidential information would cause Facebook particularized competitive  
 15 harm if disclosed. *See Dunbar v. Google, Inc.*, 2013 WL 12216625, at \*1 (N.D. Cal. Aug. 18, 2014)  
 16 (granting sealing requests that were "narrowly tailored to protect [a company's] proprietary  
 17 information").

18 \* \* \*

19 For these reasons, Facebook respectfully requests that the Court grant its renewed  
 20 administrative motion to file under seal. consistent with Special Master Garrie's instructions.  
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